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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,087	05/14/2001	Frank Venegas JR.	IDS-14102/14	8632

7590 12/20/2002

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EXAMINER

DAVIS, CASSANDRA HOPE

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 12/20/2002

Grammes of 02 4979,869

Please find below and/or attached an Office communication concerning this application or proceeding.

102 Planting

1,2,1

103 Planting

3,518,10 (no work) 11

103

4

7

Office Action Summary

Application No.

09/855,087

Applicant(s)

VENEGAS, FRANK

Examiner

Cassandra Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 112

2. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 5, the phrase "the closed end" lacks antecedent basis.

Claim 7 is indefinite because it appears as if the applicant is claiming an intermediate product, namely the message bearing panel during the molding thereof.

In claim 9, the phrase "the sign" lacks antecedent basis.

In claim 10, the phrase "the message" lacks antecedent basis.

In claim 11, the phrase "the sign" lacks antecedent basis.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Garfinkle, U. S. Patent 4,777,750. Garfinkle teaches a frame system comprising a cylindrical sleeve having a hollow stem 8, cap 7, and adaptor 5, wherein the adaptor 5 provides the closed top for the stem. The stem can be telescopically engaged with a

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smaller diameter stem 9. The upper portion of the sleeve is adapted to hold frame 3 with message bearing panel (not labeled). The frame and panel have a height less than the height of the sleeve.

3. With respect to claim 1, it has been held that the term "integral" is sufficiently broad to embrace construction united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973).

4. Claims 1, 2, 3, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Whitman, U. S. Patent 3,204,355. Whitman teaches a pipe marker comprising a sleeve or post 10 having an enlarged or bellowed lower portion 68 and a closed top portion 50, with a sign holder 30, wherein the marker is made of a plastic type material.

5. With respect to claim 1, it has been held that the term "integral" is sufficiently broad to embrace construction united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5, 8, 9, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garfinkle.

8. With respect to claim 5 and 8, since the applicant does not disclose that a sleeve having an inner diameter in the range of 2 to 8 inches solves any stated problem or is

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for any particular purpose, it appears the constructing the sleeve of any suitable diameter would have performed equally well.

With respect to claim 10 and 11, since the indicia or message on the system does not have an unobvious function relationship with respect to the panel, the specific message has not be given patentable weight.


9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garfinkle in view of Shuman, U. S. Patent 4,329,800. Shuman teaches a display device comprising a display frame 10, an upper support rod 22, a hollow tube 24, and a base. The frame, rod, tube, and base are made of any suitable plastic material, wherein the frame and base can be molded. It would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the device taught by Garfinkle of a plastic or polymeric material as taught by Shuman to provide a light weight and less costly display device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cassandra Davis whose telephone number is 703-308-2223. The examiner can normally be reached on Monday-Friday 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703-308-0629. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.


Cassandra Davis
Primary Examiner
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CD
December 16, 2002